

## Message Text

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ACTION ACDA-10

INFO OCT-01 IO-10 ISO-00 OES-03 ACDE-00 SSO-00 NSCE-00

INRE-00 SS-15 SP-02 PM-04 CIAE-00 INR-07 L-03 NSAE-00

NSC-05 EB-07 NRC-05 FEAE-00 DODE-00 AF-06 ARA-06

EA-07 EUR-12 NEA-10 /113 W  
----- 120439

O 251315Z SEP 75

FM USMISSION IAEA VIENNA

TO SECSTATE WASHDC IMMEDIATE 6434

INFO USERDA GERMANTOWN IMMEDIATE

C O N F I D E N T I A L IAEA VIENNA 8183

E.O. 11652: GDS

TAGS: IAEA, TECH, PARM

SUBJECT: COMMENTS ON DRAFT FRG/BRAZIL/IAEA TRILATERAL SAFE-  
GUARDS AGREEMENT

REF: IAEA VIENNA 8147

1. FRG REPS HANDED DRAFT OF SUBJECT AGREEMENT TO U.S.  
DEL MEMBERS ON SEPTEMBER 24, SIGNIFICANT PROVISIONS OF  
WHICH TRANSMITTED REFTEL, FOR ANY COMMENTS WE MIGHT HAVE,  
INDICATING THAT IT "ABOUT 85-90 PERCENT" THE SAME AS  
FRENCH/KOREA/IAEA TRILATERAL SAFEGUARDS AGREEMENT (GOV  
1754). THEY STATED THEY PLANNED GIVE DRAFT TO BRAZILIANS  
FRIDAY AFTERNOON (SEPTEMBER 26), ESTABLISH SCHEDULE FOR  
NEGOTIATIONS DURING MEETING OF FRG/BRAZIL MIXED  
COMMISSION IN EARLY OCTOBER, AND HOPED TO HAVE AGREEMENT  
CONSIDERED BY IAEA BOARD OF GOVERNORS (BG) IN FEBRUARY  
OR POSSIBLY JUNE 1976.

2. U.S. REPS POINTED OUT THIS DID NOT ALLOW MUCH  
TIME TO STUDY DRAFT IN DEPTH AND PROVIDE COMMENTS, AND  
ASKED FOR EXTENSION, AT LEAST UNTIL MONDAY. FRG REPS  
RESPONDED THEY WERE OBLIGATED TO PROVIDE DRAFT TO BRAZILIANS  
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BEFORE THEY DEPARTED VIENNA AT END OF THIS WEEK, AND

OUR COMMENTS SHOULD THEREFORE BE IN FRG HANDS BY FRIDAY AFTERNOON.

3. ACTION REQUESTED: WASHINGTON'S COMMENTS BE RECEIVED BY MISSION NO LATER THAN NOON FRIDAY, SEPTEMBER 26.

4. OUR PRELIMINARY REACTIONS TO DRAFT AS FOLLOWS:

A. TWENTY YEAR PERIOD DURING WHICH ANY REPLICATED PLANT WOULD BE SUBJECT TO IAEA SAFEGUARDS IS SIGNIFICANT STEP IN RIGHT DIRECTION. THIS IS SIMILAR TO ARRANGEMENT ADOPTED BY FRENCH AND KOREANS IN SEPARATE UNDERSTANDING RELATED TO IMPLEMENTATION OF FRENCH/KOREA/IAEA TRILATERAL SAFEGUARDS AGREEMENT. FRG/BRAZIL DRAFT PROVIDES THAT 20 YEAR PERIOD STARTS AFTER NOTIFICATION TO AGENCY OF INTENT TO TRANSFER FACILITIES, EQUIPMENT, MATERIALS OR TECHNOLOGICAL INFORMATION, RATHER THAN WHEN SUCH ITEMS ACTUALLY TRANSFERRED. THIS COULD DIMINISH VALUE OF 20 YEAR PROVISION IF ACTUAL TRANSFERS WERE SIGNIFICANTLY DELAYED AFTER NOTIFICATION TO AGENCY. WHEN THIS POINTED OUT TO FRG REPS THEY REPLIED THAT, AS PRACTICAL MATTER, LONG DELAY BETWEEN NOTIFICATION AND ACTUAL TRANSFERS UNLIKELY TO OCCUR.

B. DEFINITION OF "SAME OR SIMILAR PHYSICAL OR CHEMICAL PROCESSES SPECIFIED BY CONTRACTING GOVERNMENT FROM WHOSE TERRITORY THE RELEVANT TECHNOLOGICAL INFORMATION WAS TRANSFERRED" (SEE NUMBERED PARA 4 REFTEL) IS CRUCIAL TO EFFICACY OF SAFEGUARDS AGREEMENT FRG REPS AGREED, POINTING OUT FRG, AS REFLECTED IN DRAFT, WOULD HAVE CONTROL OVER SUCH DEFINITION IN IMPLEMENTATION OF AGREEMENT.

C. ALTHOUGH DRAFT AGREEMENT CONTAINS COMMITMENT THAT ITEMS SUBJECT TO AGREEMENT WILL NOT BE USED FOR MANUFACTURE OF NUCLEAR WEAPONS OR ANY OTHER NUCLEAR EXPLOSIVE DEVICES, IT DOES NOT CONTAIN PROHIBITION OF "ANY OTHER MILITARY PURPOSE", AS PROVIDED FOR IN INFCIRC/66/REV.2, AS DOES FRENCH/CONFIDENTIAL

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KOREA/IAEA AGREEMENT. WHEN THIS POINTED OUT TO FRG REPS, THEY REPLIED THAT AS NPT PARTY THEY NOT OBLIGATED UNDER TREATY TO GO BEYOND REQUIRING PROHIBITION ON NUCLEAR WEAPONS OR OTHER NUCLEAR EXPLOSIVE IN IAEA SAFEGUARDS AGREEMENTS WITH RECIPIENT COUNTRIES, AND THAT THIS UNFORTUNATE DISCREPANCY BETWEEN INFCIRS/153 AND 66/REV.2.

D. IN RESPONSE TO QUESTION, FRG REPS STATED THAT TRANSFER OF TECHNOLOGICAL INFORMATION THROUGH TRAINING OF BRAZILIANS IN FRG OR THE SERVICES OF FRG EXPERTS IN AREAS OF COOPERATION SET FORTH IN AGREEMENT WOULD NOT SPECIFICALLY BE COVERED BY TRILATERAL SAFEGUARDS AGREEMENT. ONLY INFORMATION TRANSFERRED IN ACTUAL FACILITIES, EQUIPMENT, MATERIALS OR DOCUMENTS WOULD BE SO COVERED. THEY DEFENDED THIS ON THE GROUNDS THAT THE LATTER TRANSFERS WOULD UNQUESTIONABLY EMCOMPASS THE FACILITIES IN THE AREAS OF TRAINING OR SERVICES PROVIDED AND WOULD THEREFORE BE SUBJECT TO SAFEGUARDS. THEY ALSO INDICATED THAT FRG DOES NOT HAVE LAWS ENABLING THEM TO CONTROL THIS TYPE OF TECHNOLOGY TRANSFER THROUGH INDIVIDUALS. (U.S. REGULATION 10 CFR 110 WAS MENTIONED TO THEM AS A MECHANISM USG EMPLOYS TO CONTROL SUCH TRANSFERS IN AREAS OF CHEMICAL REPROCESSING, URANIUM ENRICHMENT AND HEAVY WATER TECHNOLOGY.)

5. COMMENTS ON OTHER PROVISION OF DRAFT AGREEMENT AS FOLLOWS:

A. AGREEMENT UNCLEAR AS TO MECHANISM FOR TRIGGERING APPLICATION OF SAFEGUARDS TO FACILITIES, ETC., CONSTRUCTED BOTH DURING AND AFTER INITIAL 20 YEAR PERIOD BASED ON "RELEVANT TECHNOLOGICAL INFORMATION" TRANSFERRED. SECTIONS 4 AND 6(C) (NUMBERED PAGES 5 AND 8, RESPECTIVELY, OR REFTEL) APPEAR TO PROVIDE A BASIS FOR TRIGGERING SAFEGUARDS, BUT RESPONSIBILITY FOR REPORTING SUCH FACILITIES TO AGENCY, RESTS PRINCIPALLY WITH COUNTRY IN WHICH FACILITY EXISTS, RATHER THAN JOINT RESPONSIBILITY

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OF BOTH GOVERNMENTS. THIS POTENTIAL WEAKNESS, SINCE AGENCY WOULD PRESUMABLY HAVE TO TAKE INITIATIVE IN CHALLENGING GOVERNMENT IF IT SUSPECTED A FACILITY CONSTRUCTED, OR BEING CONSTRUCTED, WAS ELIGIBLE FOR SAFEGUARDS. IN CONTRAST, PARA 6(C) OF FRENCH/KOREA/ IAEA AGREEMENT PROVIDED EITHER ROK OR GOF "AFTER CONSULTATION WITH ROK", SHALL INFORM AGENCY WHAT FACILITIES HAVE BEEN REPLICATED WITH SUPPLIED TECHNOLOGY AND SHOULD THEREFORE BE SUBJECT TO SAFEGUARDS.

B. AGENCY'S UNDERTAKING IN SECTION 4 (NUMBERED PARA 5 REFTEL) IS NOT CLEAR AS TO WHICH "SAFEGUARDS" SHALL BE APPLIED, I.E., INFCIRC/153 OR 66/REV.2, NOR DOES IT SPECIFY THE PURPOSE OF SUCH SAFEGUARDS.

C. ON BASIS OUR PRELIMINARY REVIEW OF PROPOSED  
AGREEMENT, WE FORESEE, INTER ALIA, SOME POTENTIALLY  
SERIOUS PROBLEMS FOR AGENCY TO ACCEPT CERTAIN PROVISIONS,  
IN VIEW STATEMENT IN PARA 5 OF INFCIRC/66/ REV.2 THAT  
AGENCY WILL NOT RPT NOT ASSUME RESPONSIBILITY FOR  
ADMINISTERING SAFEGUARDS UNLESS THE PRINCIPLES OF  
THE SAFEGUARDS AND THE PROCEDURES TO BE USED ARE  
ESSENTIALLY CONSISTENT WITH THOSE SET FORTH IN  
INFCIRC/62/ REV.2. FOR EXAMPLE, TRANSFERS TO THIRD  
COUNTRIES WHICH ARE NUCLEAR WEAPON STATES WOULD BE  
MADE UNDER CONDITIONS CONTRARY TO PROVISIONS SET FORTH  
IN PARA 28 OR INFCIRC/66/REV.2.TAPE

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## Message Attributes

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